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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 BRIAN S. S., ) NO. CV 19-515-E  
12 )  
13 Plaintiff, )  
14 )  
15 v. ) MEMORANDUM OPINION  
16 )  
17 ANDREW SAUL, Commissioner of ) AND ORDER OF REMAND  
18 Social Security, )  
19 )  
20 Defendant. )  
21 )  
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17  
18 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS  
19 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary  
20 judgment are denied, and this matter is remanded for further  
21 administrative action consistent with this Opinion.  
22

23 PROCEEDINGS  
24

25 Plaintiff filed a Complaint on January 23, 2019, seeking review  
26 of the Commissioner's denial of disability benefits. The parties  
27 filed a consent to proceed before a United States Magistrate Judge on  
28 March 19, 2019.

1 Plaintiff filed a motion for summary judgment on July 5, 2019.  
2 Defendant filed a motion for summary judgment on July 25, 2019. The  
3 Court has taken both motions under submission without oral argument.  
4 See L.R. 7-15; "Order," filed January 25, 2019.

## 5 6 BACKGROUND

7  
8 Plaintiff, a former maintenance technician, asserts disability  
9 since January 9, 2015, based on alleged physical and mental  
10 impairments (Administrative Record ("A.R.") 34-42, 187, 209, 215,  
11 288). The alleged mental impairments include "anxiety, memory loss,  
12 hearing voices, trouble sleeping and nightmares" for which Plaintiff  
13 takes Sertraline HCL (Zoloft), Zolpidem Tartrate (Ambien) and  
14 Quetiapine Fumarate (Seroquel). (Id.).

15  
16 Dr. Lawrence Ogbechie, a psychiatrist who began treating  
17 Plaintiff in February of 2015, diagnosed major depressive disorder,  
18 recurrent, with stressors including the shooting death of Plaintiff's  
19 son in 2009 and the wartime deaths in Cambodia of Plaintiff's mother,  
20 brother and two sisters (A.R. 325, 328). In a "Mental Disorder  
21 Questionnaire Form" dated July 13, 2015, Dr. Ogbechie opined that  
22 Plaintiff has: (1) "limited capacity to interact with others," due to  
23 his limited communication skills and his desire to be alone and not to  
24 talk to people; (2) poor concentration, inability to "sustain focused  
25 [sic] in a period of time," but the ability to complete simple  
26 household routines with some help and to follow simple oral  
27 instructions with "some difficulty"; and (3) "fair to poor"  
28 adaptability to stresses common to everyday life (A.R. 326-28). Dr.

1 Ogbechie assigned a Global Assessment of Functioning ("GAF") score of  
2 55,<sup>1</sup> and gave Plaintiff a "guarded" prognosis (A.R. 328).

3  
4 In August and November of 2015, non-examining state agency review  
5 physicians considered some of the medical records (including Dr.  
6 Ogbechie's treatment notes and opinions) (A.R. 69-72, 81-85). The  
7 state agency physicians opined that Plaintiff has severe affective and  
8 anxiety disorders and, due to his difficulty with focus and sustaining  
9 concentration, has moderate limitations in his ability to: (1) carry  
10 out detailed instructions; (2) maintain attention and concentration  
11 for extended periods; (3) work in coordination with or in proximity to  
12 others without being distracted by them; (4) complete a normal workday  
13 and workweek without interruptions from psychologically based symptoms  
14 and to perform at a consistent pace without an unreasonable number and  
15 length of rest periods; (5) interact appropriately with the general  
16 public; (6) accept instructions and respond appropriately to criticism  
17 from supervisors; and (7) respond to changes in the work setting (A.R.  
18 69-72, 81-85). The physicians opined that Plaintiff retains the  
19 ability to perform "simple repetitive tasks" requiring no more than  
20 "minimal or superficial interaction with others." See A.R. 69, 72,  
21 84-85 (reportedly giving "weight" to Dr. Ogbechie's opinions)  
22 (emphasis added); but see A.R. 70, 83 (claiming, "There is no  
23 indication that there is medical or other opinion evidence [to  
24

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25 <sup>1</sup> See American Psychological Association, Diagnostic and  
26 Statistical Manual of Mental Disorders 34 (4th ed. 2000). A GAF  
27 of 51-60 indicates "[m]oderate symptoms (e.g., flat affect and  
28 circumstantial speech, occasional panic attacks) or moderate  
difficulty in social, occupational, or school functioning (e.g.,  
temporarily falling behind in schoolwork)." Id.

1 weigh].").

2  
3 The Administrative Law Judge ("ALJ") found that Plaintiff has a  
4 "severe" major depressive disorder, but retains the residual  
5 functional capacity for work at all exertion levels limited to  
6 "simple, routine and repetitive tasks, with no more than frequent  
7 interaction with public and coworkers" (A.R. 16, 18-19, 21 (giving  
8 only "partial weight" to Dr. Ogbechie's July, 2015 opinions and to the  
9 state agency physicians' opinions)) (emphasis added). The ALJ found  
10 that a person with this residual functional capacity could perform  
11 jobs existing in significant numbers in the national economy (A.R. 23  
12 (referencing vocational expert testimony at 55-60)). The Appeals  
13 Council denied review (A.R. 1-3).

#### 14 15 STANDARD OF REVIEW

16  
17 Under 42 U.S.C. section 405(g), this Court reviews the  
18 Administration's decision to determine if: (1) the Administration's  
19 findings are supported by substantial evidence; and (2) the  
20 Administration used correct legal standards. See Carmickle v.  
21 Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue,  
22 499 F.3d 1071, 1074 (9th Cir. 2007). Substantial evidence is "such  
23 relevant evidence as a reasonable mind might accept as adequate to  
24 support a conclusion." Richardson v. Perales, 402 U.S. 389, 401  
25 (1971) (citation and quotations omitted); see Widmark v. Barnhart,  
26 454 F.3d 1063, 1067 (9th Cir. 2006).

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1 If the evidence can support either outcome, the court may  
2 not substitute its judgment for that of the ALJ. But the  
3 Commissioner's decision cannot be affirmed simply by  
4 isolating a specific quantum of supporting evidence.  
5 Rather, a court must consider the record as a whole,  
6 weighing both evidence that supports and evidence that  
7 detracts from the [administrative] conclusion.

8  
9 Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citations and  
10 quotations omitted).

## 11 12 DISCUSSION

13  
14 Plaintiff asserts that the ALJ erred in connection with the  
15 assessment of Plaintiff's mental residual functional capacity. For  
16 the reasons discussed herein, the Court agrees.

### 17 18 I. Summary of the Relevant Medical Record

19  
20 Dr. Ogbechie treated Plaintiff monthly from February of 2015  
21 through at least December of 2017 (A.R. 335-45, 348-51, 370-77, 413-  
22 42). Plaintiff initially complained of increased anxiety and  
23 nervousness, occasional panic attacks, occasional mood swings,  
24 frustration, "too much thinking," and poor sleep (A.R. 335).  
25 Plaintiff reported that, although his son had been shot and killed in  
26 2009, Plaintiff had been seeing visions of his son (A.R. 335).  
27 Plaintiff reportedly had a history of depression since 2009, with  
28 generalized weakness, no energy, trouble sleeping, poor concentration,

1 poor memory, fatigue, loss of appetite, loss of interest in daily  
2 activities, nightmares, forgetfulness and inability to focus (A.R.  
3 335). On examination, Plaintiff reportedly was oriented, pleasant,  
4 cooperative and coherent, with depressed vegetative signs present and  
5 "fair" memory, concentration, insight and judgment (A.R. 335). Dr.  
6 Ogbechie diagnosed major depressive disorder, recurrent, assigned a  
7 GAF score of 55, and prescribed Trazodone HCL and Zoloft (A.R. 335-  
8 36). Except as otherwise indicated below, throughout Dr. Ogbechie's  
9 treatment, Plaintiff's reported examination results and assigned GAF  
10 scores remained unchanged from this first visit, and his medications  
11 were continued. See A.R. 338-45, 348-51, 370-77, 413-42.

12  
13 In March of 2015, Plaintiff reported that he was depressed and  
14 could not sleep (A.R. 337). Dr. Ogbechie increased Plaintiff's  
15 Trazodone (A.R. 337). In April of 2015, Plaintiff reported that he  
16 was feeling down, frustrated, hopeless and helpless (A.R. 338-39). In  
17 May of 2015, Plaintiff reported poor concentration, frustration, and  
18 right shoulder pain (A.R. 340). In June of 2015, Dr. Ogbechie added a  
19 prescription for Ambien (A.R. 341).

20  
21 Plaintiff returned later in June of 2015, complaining of  
22 nightmares (A.R. 342). In July of 2015, Dr. Ogbechie completed a  
23 Mental Disorder Questionnaire Form (summarized above) (A.R. 324-28,  
24 343-44). In August of 2015, Plaintiff reported nightmares and feeling  
25 "alone and sad," but "denie[d] any harm to self or others" (A.R. 345).  
26 In September of 2015, Plaintiff reported that he remained "alone and  
27 sad" (A.R. 349-51). In November of 2015, Plaintiff again complained  
28 of nightmares (A.R. 370).

1 In December of 2015, Plaintiff reported that people were knocking  
2 on his door at night, he was tired and he was seeing and talking to  
3 his deceased son (A.R. 371). He was prescribed Seroquel (A.R. 371).  
4 In January of 2016, Plaintiff reported that he feared being hurt by  
5 someone and he continued to see things and hear voices (A.R. 372-73).

6  
7 In February of 2016, Plaintiff returned with the same complaints  
8 (A.R. 374). In March of 2016, Plaintiff reported seeing things,  
9 hearing voices, fearing being hurt by someone, and feeling sad,  
10 depressed and lonely (A.R. 375). In May of 2016, Plaintiff reported  
11 that he could not sleep, had fatigue, felt depressed, was "alone and  
12 sad," and that he continued to see things, hear voices and fear  
13 someone would hurt him (A.R. 377). In June of 2016, Plaintiff  
14 reported worry, anxiety, thinking too much, difficulty sleeping, and  
15 said he continued to see things, hear voices and fear someone would  
16 hurt him (A.R. 442).

17  
18 In July of 2016, Plaintiff sought a "certificate of disability,"  
19 reporting that he continued to see things, hear voices and fear  
20 someone would hurt him (A.R. 441). Examination results were  
21 unchanged, except for specific notations that Plaintiff "admits to  
22 perceptual disturbances" and "delusional ideations" (A.R. 441). Dr.  
23 Ogbechie diagnosed major depressive disorder, recurrent, severe, with  
24 psychotic features (A.R. 441).

25  
26 In August of 2016, Plaintiff reported that he was fatigued,  
27 depressed, sad and lonely, had trouble sleeping and poor  
28 concentration, and he said he continued to see things, hear voices and

1 fear someone would hurt him (A.R. 439). In September of 2016,  
2 Plaintiff reported that he was worried, sad, depressed and fatigued  
3 (A.R. 437). He also said he had poor concentration and trouble  
4 sleeping (A.R. 437). In October of 2016, Plaintiff returned, and his  
5 medications were continued (A.R. 435-36).  
6

7 In November of 2016, Plaintiff reported that he continued to see  
8 things, hear voices and fear someone would hurt him (A.R. 433). In  
9 January of 2017, Plaintiff reported that he had trouble sleeping, he  
10 was recently divorced, and he was worried, sad and depressed (A.R.  
11 431). In February of 2017, Plaintiff reported that he was worried,  
12 sad, depressed, had trouble sleeping and he continued to see things,  
13 hear voices and fear someone would hurt him (A.R. 429). In March of  
14 2017, Plaintiff reported he was sad, depressed, thinking too much,  
15 having anxiety, worrying and having trouble sleeping (A.R. 427).  
16 Plaintiff also said he continued to see things, hear voices and fear  
17 someone would hurt him (A.R. 427).  
18

19 In April of 2017, Plaintiff reported fatigue, anthralgia, poor  
20 concentration, worry, sadness, depression, thinking too much, and  
21 inability to sleep (A.R. 425). Plaintiff also said he continued to  
22 see things, hear voices and fear someone would hurt him (A.R. 425).  
23 In May of 2017, Dr. Ogbechie doubled Plaintiff's Seroquel dose (A.R.  
24 424). In June of 2017, Plaintiff reported trouble sleeping,  
25 nightmares, flashbacks, worry, sadness and depression (A.R. 422).  
26

27 In July of 2017, Plaintiff reported no new complaints and said he  
28 was "doing well with the prescribed medication," but also said that

1 his "[p]revious symptoms still exist" (A.R. 420). In August of 2017,  
2 Plaintiff gave a similar report (A.R. 417). In October of 2017,  
3 Plaintiff again reported that he was "doing well with the prescribed  
4 medication" and said he was "feeling better," but Plaintiff also said  
5 he was hearing voices and having nightmares and disturbed sleep (A.R.  
6 413). Dr. Ogbechie added a diagnosis of PTSD and continued  
7 Plaintiff's medications (A.R. 413).<sup>2</sup>

8  
9 In November of 2017, Plaintiff reported no new complaints and  
10 said he was "doing well with the prescribed medication," but also said  
11 that his prior symptoms still existed (A.R. 415). Dr. Ogbechie  
12 prepared an "Evaluation Form for Mental Disorders" dated November 11,  
13 2017 (A.R. 461-64). Therein, Dr. Ogbechie explained Plaintiff's  
14 illness as follows:

15  
16 The patient was initially seen on 02-16-2015, complaining of  
17 being tired [from] people knocking on his door at night due  
18 to the killing of his son, that [sic] was gunned down 6  
19 years ago. He stated that[] he has poor sleep, think[s] too  
20 much, depression, generalized weakness[,] no energy,  
21 nightmares and bad dreams, loss of interest in daily life  
22 activities, poor concentration and memory, cannot focus and  
23 forgets a lot.

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26  
27 <sup>2</sup> Dr. Ogbechie completed a "Certificate of Disability"  
28 form dated October 7, 2017, certifying that Plaintiff would be  
disabled from October 7, 2017 through October 7, 2018 based on  
his depression (A.R. 440).

1 (A.R. 461). Plaintiff, who was from Cambodia, reported that his  
2 mother, brother and two sisters were killed in front of Plaintiff  
3 during a war, and Plaintiff also said that his son had been gunned  
4 down in 2009 after Plaintiff's wife left him (A.R. 461).

5  
6 On examination, Plaintiff reportedly was calm, cooperative and  
7 displayed "unworthy behavior," admitted to having poor concentration,  
8 inability to focus and easy disruption, poor memory, forgetfulness,  
9 thinking too much and loss of interest in activities (A.R. 462).  
10 Plaintiff reportedly appeared sad and anxious, and Plaintiff stated  
11 that he is depressed with low energy, but without suicidal or  
12 homicidal thoughts (A.R. 462). Plaintiff admitted hearing voices and  
13 seeing his dead son in front of him as well as in his dreams (A.R.  
14 462). Plaintiff reportedly was able to help with simple housework,  
15 cook simple foods "sometimes with some help" and care for himself  
16 "with some motivation" (A.R. 463). Due to his multiple traumatic  
17 experiences, Plaintiff reportedly wanted to stay alone and not talk to  
18 anyone (A.R. 463). According to Dr. Ogbechie, Plaintiff's  
19 concentration is poor, Plaintiff has limited ability to sustain  
20 focused attention and is easily disrupted, and Plaintiff is able to  
21 follow simple oral instructions "but sometimes with difficulty" (A.R.  
22 463). Dr. Ogbechie characterized Plaintiff's "adaptability" to a  
23 work-like environment as "fair to poor" (A.R. 463). Plaintiff then  
24 was taking Ambien, Seroquel and Zoloft (A.R. 464). Dr. Ogbechie  
25 diagnosed major depressive disorder, recurrent, severe, with a GAF of  
26 55, and a "guarded" prognosis (A.R. 464).

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1 Dr. Ogbechie also provided a "Medical Source Statement of Ability  
2 to Do Work-Related Activities (Mental)" dated December 2, 2017 (prior  
3 to the administrative hearing) (A.R. 458-60). Based on Plaintiff's  
4 depression screening test and Mini-Mental Status Examination ("MMSE"),  
5 Dr. Ogbechie indicated that Plaintiff has "marked" limitations in his  
6 ability to make judgments on complex work-related decisions, and  
7 "moderate" limitations in his ability to understand, remember and  
8 carry out detailed instructions, make judgments on simple work-related  
9 decisions, and interact appropriately with the public, supervisors and  
10 coworkers (A.R. 458-60 (emphasis added); see also A.R. 465-66 (MMSE  
11 test reporting score of 23 out of 30 suggesting, at most, "mild"  
12 cognitive impairment, and depression screening test reporting score of  
13 18 suggesting "moderately severe depression"))). Dr. Ogbechie also  
14 reported that Plaintiff has decreased concentration and memory and is  
15 forgetful and unable to focus (A.R. 459).

16  
17 **II. Substantial Evidence Does Not Support the ALJ's Mental Residual**  
18 **Functional Capacity Assessment, and the ALJ Erred in the**  
19 **Evaluation of the Medical Opinion Evidence.**  
20

21 On the present record, the ALJ's assessment of Plaintiff's mental  
22 limitations is not supported by substantial evidence. As summarized  
23 above, the state agency physicians gave "weight" to Dr. Ogbechie's  
24 opinions, and Dr. Ogbechie opined that Plaintiff has significantly  
25 greater mental limitations than the ALJ found to exist. The  
26 Administration did not utilize the services of any consultative  
27 examining physician. Thus, the ALJ's assessment of Plaintiff's mental  
28 limitations (as supposedly permitting "frequent interaction" with the

1 public and with coworkers) is unsupported by any expert medical  
2 opinion.

3  
4 The ALJ appears to have relied on her own non-medical lay opinion  
5 to define Plaintiff's functional capacity. An ALJ cannot properly  
6 rely on the ALJ's own lay knowledge to make medical interpretations of  
7 examination results or to determine the severity of medically  
8 determinable impairments. See Tackett v. Apfel, 180 F.3d 1094, 1102-  
9 03 (9th Cir. 1999); Balsamo v. Chater, 142 F.3d 75, 81 (2d Cir. 1998)  
10 (an "ALJ cannot arbitrarily substitute his [or her] own judgment for  
11 competent medical opinion") (internal quotation and citation omitted);  
12 Rohan v. Chater, 98 F.3d 966, 970 (7th Cir. 1996) ("ALJs must not  
13 succumb to the temptation to play doctor and make their own  
14 independent medical findings"); Day v. Weinberger, 522 F.2d 1154, 1156  
15 (9th Cir. 1975) (an ALJ is forbidden from making his or her own  
16 medical assessment beyond that demonstrated by the record). Absent  
17 expert medical assistance, the ALJ could not competently translate the  
18 medical evidence in this case into a mental residual functional  
19 capacity assessment. See Tackett v. Apfel, 180 F.3d at 1102-03 (ALJ's  
20 residual functional capacity assessment cannot stand in the absence of  
21 evidentiary support).

22  
23 Rather than making her own lay assessment of Plaintiff's mental  
24 limitations, the ALJ should have ordered an examination and evaluation  
25 of Plaintiff by a consultative mental health specialist. See Day v.  
26 Weinberger, 522 F.2d at 1156; see also Reed v. Massanari, 270 F.3d  
27 838, 843 (9th Cir. 2001) (where available medical evidence is  
28 insufficient to determine the severity of the claimant's impairment,

1 the ALJ should order a consultative examination by a specialist);  
2 accord Kish v. Colvin, 552 Fed. App'x 650 (2014); see generally Mayes  
3 v. Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001) (ALJ's duty to  
4 develop the record further is triggered "when there is ambiguous  
5 evidence or when the record is inadequate to allow for the proper  
6 evaluation of the evidence") (citation omitted); Brown v. Heckler, 713  
7 F.2d 441, 443 (9th Cir. 1983) ("[T]he ALJ has a special duty to fully  
8 and fairly develop the record to assure the claimant's interests are  
9 considered. This duty exists even when the claimant is represented by  
10 counsel." ).

11  
12 The ALJ also erred with respect to the ALJ's evaluation of Dr.  
13 Ogbechie's July, 2015 opinion. The ALJ discounted this opinion as  
14 supposedly not supported by: (1) Dr. Ogbechie's treatment notes, which  
15 assertedly showed that Plaintiff was "doing well with medications" and  
16 that "mental status examinations were within normal limits" (A.R. 21);  
17 and (2) Plaintiff's admitted ability to "drive to appointments and  
18 pharmacy" (A.R. 21).<sup>3</sup>

19  
20 Generally, a treating physician's conclusions "must be given  
21 substantial weight." Embrey v. Bowen, 849 F.2d 418, 422 (9th Cir.  
22 1988); see Rodriguez v. Bowen, 876 F.2d 759, 762 (9th Cir. 1989) ("the  
23 ALJ must give sufficient weight to the subjective aspects of a

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24  
25 <sup>3</sup> The ALJ also rejected the state agency physicians'  
26 limitation of Plaintiff to "minimal interactions with others" as  
27 "over-exaggerated in light of the medical evidence" (A.R. 21).  
28 According to the ALJ, "[e]valuations show[ed] that [Plaintiff]  
was always pleasant, cooperative, and coherent and denied any  
thoughts of harm or danger to self or others" (A.R. 21).

1 doctor's opinion. . . . This is especially true when the opinion is  
2 that of a treating physician") (citation omitted); see also Garrison  
3 v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014) (discussing deference  
4 owed to the opinions of treating and examining physicians). Even  
5 where the treating physician's opinions are contradicted, "if the ALJ  
6 wishes to disregard the opinion[s] of the treating physician he . . .  
7 must make findings setting forth specific, legitimate reasons for  
8 doing so that are based on substantial evidence in the record."  
9 Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987) (citation,  
10 quotations and brackets omitted); see Rodriguez v. Bowen, 876 F.2d at  
11 762 ("The ALJ may disregard the treating physician's opinion, but only  
12 by setting forth specific, legitimate reasons for doing so, and this  
13 decision must itself be based on substantial evidence") (citation and  
14 quotations omitted). Rejection of an uncontradicted opinion of a  
15 treating physician, as arguably applicable here, requires a statement  
16 of "clear and convincing" reasons. Smolen v. Chater, 80 F.3d 1273,  
17 1285 (9th Cir. 1996); Gallant v. Heckler, 753 F.2d 1450, 1454 (9th  
18 Cir. 1984). Here, the ALJ's stated reasons for discounting Dr.  
19 Ogbechie's opinions are insufficient under either standard.

20  
21 An ALJ sometimes may properly reject a treating physician's  
22 opinion where the opinion is not adequately supported by the  
23 physician's treatment notes or objective clinical findings. See  
24 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008) (ALJ may  
25 reject a treating physician's opinion that is inconsistent with other  
26 medical evidence, including the physician's treatment notes); Connett  
27 v. Barnhart, 340 F.3d 871, 875 (9th Cir. 2003) (treating physician's  
28 opinion properly rejected where physician's treatment notes "provide

1 no basis for the functional restrictions he opined should be imposed  
2 on [the claimant]"); see also 20 C.F.R. §§ 404.1527(c), 416.927(c)  
3 (factors to consider in weighing treating source opinion include the  
4 supportability of the opinion by medical signs and laboratory findings  
5 as well as the opinion's consistency with the record as a whole).  
6

7 In the present case, however, no physician discerned any  
8 inconsistency between Dr. Ogbechie's opinions and his notes or any  
9 other part of the medical record. The state agency physicians  
10 reviewed and gave weight to Dr. Ogbechie's opinions available at the  
11 time of their review (A.R. 69, 72, 84-85). As detailed above, Dr.  
12 Ogbechie's notes consistently report that Plaintiff presented with  
13 "depressed vegetative signs," which no physician characterized as  
14 "within normal limits" (as the ALJ purported to conclude). The ALJ  
15 also did not discuss Dr. Ogbechie's detailed December, 2017 medical  
16 source statement, or the accompanying evaluation form, MMSE and  
17 depression questionnaire (A.R. 20-21; see also A.R. 458-66).  
18 Additionally, although there were some treatment notes beginning in  
19 July of 2017 indicating that Plaintiff was "doing well with his  
20 medication," all of those notes also indicate that Plaintiff's  
21 symptoms, including Plaintiff's delusional symptoms, continued despite  
22 medication (A.R. 413, 415, 417, 420). In light of this record, the  
23 ALJ's lay discernment of any claimed inconsistency between the Dr.  
24 Ogbechie's treatment notes and Dr. Ogbechie's medical opinions cannot  
25 constitute substantial evidence. See Balsamo v. Chater, 142 F.3d at  
26 81; Rohan v. Chater, 98 F.3d at 970; Day v. Weinberger, 522 F.2d at  
27 1156.

28 ///

1 Furthermore, while inconsistencies between a treating physician's  
2 opinions and a claimant's admitted daily activities sometimes can  
3 furnish a sufficient reason for rejecting a treating physician's  
4 opinions, see, e.g., Rollins v. Massanari, 261 F.3d 853, 856 (9th Cir.  
5 2001), Plaintiff's admitted activities are not inconsistent with Dr.  
6 Ogbechie's opinions. Those activities consist of sleeping most of the  
7 day and driving no more than three times a month to doctors'  
8 appointments and to the pharmacy (see A.R. 33-34, 44-46). These scant  
9 activities do not provide a legitimate basis for discounting Dr.  
10 Ogbechie's opinions.  
11

12 Defendant suggests as a ground for discounting Dr. Ogbechie's  
13 opinions the asserted fact that Dr. Ogbechie relied on Plaintiff's  
14 "properly discounted" subjective complaints. See Defendant's Motion,  
15 pp. 6-7. The ALJ did not expressly invoke Dr. Ogbechie's alleged  
16 reliance on Plaintiff's subjective complaints as a ground for  
17 discounting Dr. Ogbechie's opinions (A.R. 20-21). Therefore, this  
18 Court cannot affirm the ALJ's discounting of Dr. Ogbechie's opinions  
19 on this ground. See Pinto v. Massanari, 249 F.3d 840, 847 (9th  
20 Cir.2001) (court "cannot affirm the decision of an agency on a ground  
21 that the agency did not invoke in making its decision").  
22

23 Defendant also argues that the ALJ's failure to limit Plaintiff's  
24 residual functional capacity to preclude more than "minimal or  
25 superficial" contact with others is harmless in light of the  
26 vocational expert's testimony. See Defendant's Motion, pp. 7-8. The  
27 vocational expert initially testified that, if a person were limited  
28 to simple, routine tasks and "occasional" contact with the public,

1 co-workers and supervisors, or, alternatively, to no contact with the  
2 public and "occasional superficial" contact with co-workers, that  
3 person could perform jobs as an automation machine attendant, hand  
4 packager and laundry worker (A.R. 55-57).<sup>4</sup> The vocational expert  
5 testified that the Dictionary of Occupational Titles does not address  
6 contact with co-workers or supervisors but, based on her experience,  
7 the identified jobs "generally . . . [work] with things or objects,  
8 and so there's not . . . constant contact with other people" (A.R.  
9 56). On further questioning, however, the vocational expert admitted  
10 that the jobs identified probably would require "more than occasional"  
11 contact with supervisors during training (A.R. 59). When asked to  
12 repeat the response, the vocations expert said, confusingly, "I said  
13 they probably couldn't." Is that was -- that was my answer? . . .  
14 Yes. Because during training, you're going to have more contact with  
15 the supervisors, and watching them more closely [sic]" (A.R. 60).  
16 Thus, the vocational expert's testimony does not provide substantial  
17 evidence that a person limited to "minimal or superficial" contact  
18 with others (including supervisors) could perform any of the jobs  
19 identified.

20  
21 On the current record, the Court is unable to deem the ALJ's  
22 errors to have been harmless. See Treichler v. Commissioner, 775 F.3d  
23 1090, 1105 (9th Cir. 2014) ("Where, as in this case, an ALJ makes a  
24 legal error, but the record is uncertain and ambiguous, the proper  
25 approach is to remand the case to the agency"); see also Molina v.

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26  
27 <sup>4</sup> In social security terminology, "occasional" means  
28 "occurring from very little up to one-third of the time." See  
Social Security Ruling 83-10.

1 Astrue, 674 F.3d 1104, 1115 (9th Cir. 2012) (an error "is harmless  
2 where it is inconsequential to the ultimate non-disability  
3 determination") (citations and quotations omitted); McLeod v. Astrue,  
4 640 F.3d 881, 887 (9th Cir. 2011) (error not harmless where "the  
5 reviewing court can determine from the 'circumstances of the case'  
6 that further administrative review is needed to determine whether  
7 there was prejudice from the error").<sup>5</sup>

8  
9 **III. Remand for Further Administrative Proceedings is Appropriate.**

10  
11 Remand is appropriate because the circumstances of this case  
12 suggest that further administrative review could remedy the errors  
13 discussed herein. McLeod v. Astrue, 640 F.3d at 888; see also INS v.  
14 Ventura, 537 U.S. 12, 16 (2002) (upon reversal of an administrative  
15 determination, the proper course is remand for additional agency  
16 investigation or explanation, except in rare circumstances); Dominquez  
17 v. Colvin, 808 F.3d 403, 407 (9th Cir. 2015) ("Unless the district  
18 court concludes that further administrative proceedings would serve no  
19 useful purpose, it may not remand with a direction to provide  
20 benefits"); Treichler v. Commissioner, 775 F.3d at 1101 n.5 (remand  
21 for further administrative proceedings is the proper remedy "in all  
22 but the rarest cases"); Garrison v. Colvin, 759 F.3d at 1020 (court

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23  
24 <sup>5</sup> The initial and reconsideration disability  
25 determinations suggest that a person with the limitations the  
26 state agency physicians found to exist might be able to perform  
27 other work (see A.R. 73, 85-86 (referencing the grids)).  
28 However, no vocational expert testimony supports this suggestion.  
See A.R. 55-61; see also Moore v. Apfel, 216 F.3d 864, 870 (9th  
Cir. 2000) ("When a claimant suffers from both exertional and  
nonexertional limitations, the grids are only a framework and a  
[vocational expert] must be consulted.").

1 will credit-as-true medical opinion evidence only where, inter alia,  
2 "the record has been fully developed and further administrative  
3 proceedings would serve no useful purpose"); Harman v. Apfel, 211 F.3d  
4 1172, 1180-81 (9th Cir.), cert. denied, 531 U.S. 1038 (2000) (remand  
5 for further proceedings rather than for the immediate payment of  
6 benefits is appropriate where there are "sufficient unanswered  
7 questions in the record"). There remain significant unanswered  
8 questions in the present record.

9  
10 **CONCLUSION**

11  
12 For all of the foregoing reasons,<sup>6</sup> Plaintiff's and Defendant's  
13 motions for summary judgment are denied and this matter is remanded  
14 for further administrative action consistent with this Opinion.

15  
16 LET JUDGMENT BE ENTERED ACCORDINGLY.

17  
18 DATED: September 16, 2019.

19  
20  
21 /s/  
22 CHARLES F. EICK  
23 UNITED STATES MAGISTRATE JUDGE  
24

25  
26  
27 <sup>6</sup> The Court has not reached any other issue raised by  
28 Plaintiff except insofar as to determine that reversal with a  
directive for the immediate payment of benefits would not be  
appropriate at this time.